



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 13951821

Date: JULY 14, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a well control instructor, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor in the field of well control instruction, the Director concluded that the record does not establish that the Beneficiary's endeavor has national importance. The Director also concluded the record did not satisfy the second and third *Dhanasar* prongs. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the endeavor as a plan to continue “teach[ing] a variety of well control techniques/programs such as International Association of Drilling Contractors (IADC) WELLSHARP Surface, Subsea, Workover & Completions, Snubbing, Coil Tubing and Wireline Well Control for Drilling & Completion employees.” The Petitioner asserted that his instruction “significantly reduc[es] the well control incidents within [his employer] and its partner companies, which results in drilling operations in a safer environment.”

In response to the Director's request for evidence, the Petitioner submitted general articles about oil and gas well control; the U.S. Chemical Safety and Hazard Investigating Board's (USCSHIB's) Investigation Report Executive Summary on Drilling Rig Explosion and Fire at the Macondo Well Gas, Deepwater Horizon Rig; the USCSHIB's Investigation Report on the Gas Well Blowout and Fire at Pryor Trust Well 7H-9; and letters of support.

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that “the evidence is insufficient to demonstrate that the particular work that the [P]etitioner proposes to perform has implications beyond his employer at a level sufficient to demonstrate its national importance under the first prong of the *Dhanasar* analytical framework.” The Director further referenced the observation in *Dhanasar* that, “[w]hile STEM teaching has substantial merit in relation to U.S. educational interests, the record [in *Dhanasar*] does not indicate by a preponderance of evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly.” *Dhanasar*, 26 I&N Dec. at 893.

On appeal, the Petitioner asserts that prior oil drilling disasters have caused the death of crew members; moratoria on oil drilling; environmental damage; scarcity and, therefore, higher prices for seafood; and diminished tourism due to polluted beaches. The Petitioner also asserts that the Occupational Safety and Health Administration (OSHA) and Bureau of Safety and Environmental Enforcement have taken “specific interest” in preventing oil drilling disasters. For example, the Petitioner quotes an OSHA document that states, in relevant part, “properly trained personnel are essential for well control activities.” The Petitioner further asserts that his trainees share what they have learned from the Petitioner with technicians employed by other companies, thereby indirectly benefitting them. The Petitioner adds that he “has been engaged with the International Association of Drilling Contractors

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

(IADC) in [REDACTED] in well control for use by IADC worldwide . . . [indicating] even more the truly national and even international proposed impact of [his] work.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The proposed endeavor of teaching well control techniques to coworkers and contractors benefits the Petitioner’s employer and contractors; however, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner’s employer and its contractors, as contemplated by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. Furthermore, the Petitioner has not established, through credible evidence, how technicians employed by other companies indirectly receive the his instruction by way of secondhand training by his trainees, as he asserts. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361.

The Petitioner’s focus on appeal on the field of drilling in general does not address specific aspects of the proposed endeavor and how the performance of the planned activities would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889. Additionally, the potential for widespread disaster caused by poor well control techniques addresses the substantial merit in instructing technicians how to prevent such disasters; however, the record does not establish how the specific endeavor has broader implications in the field of well control instruction. *See id.*

We note that a one-page letter submitted on appeal from the IADC’s [REDACTED] acknowledges that “[the Petitioner’s] contributions [to a panel of subject-matter experts from four oil companies in 2017] significantly augmented [the IADC’s] efforts to generate a broader IADC Well Control Curriculum and [REDACTED] that we are using worldwide.” The letter further remarks that “[the Petitioner’s] contributions [in 2017] have benefitted our industry on a broad scale.” However, the record does not establish that the Petitioner would contribute prospectively to the IADC Well Control Curriculum and [REDACTED]. Although the Petitioner’s expertise and prior contributions relate to aspects of the second *Dhanasar* prong, the letter does not address how the proposed, prospective endeavor may benefit the industry on a broad scale, as contemplated by the first *Dhanasar* prong. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.